



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Advanced Telecommunications Corporation

File: B-233274

Date: February 24, 1989

DIGEST

1. Although agency advice might have been confusing regarding whether compliance with a certification requirement was a prerequisite to submitting a proposal, where the solicitation provision is reasonably clear and unambiguous, protest is denied.

2. Protest that insufficient information was available to enable the protester to determine whether it could meet security requirements for telecommunications services is denied where solicitation provides sufficient information to allow offerors to compete intelligently and on equal terms. In any event, the obtaining of the requisite certification is a matter between the offeror and the federal agency which has the responsibility of granting the approval of the protester's approach.

DECISION

Advanced Telecommunications Corporation (ATC) protests request for proposals (RFP) No. DAEA08-88-R-0049, issued by Headquarters, 7th Signal Command, Fort Ritchie, Maryland, for provision of long distance telephone service under the equal network access program from four Army installations in Georgia to all locations in the United States, the Virgin Islands, and Puerto Rico. ATC contends that it was misled by the Army with regard to the meaning of an RFP provision and was not supplied with sufficient information regarding what is needed to comply with that provision.

We deny the protest.

The RFP advised at paragraph C.3.5, "Circuit Protection":

"The PIC [Primary Interexchange Carrier] shall provide a copy of both the National Security Agency's (NSA) approval form/certification and all

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back-up material required to obtain said approval which shall be attached to and made a part of the -technical proposal."

Attachment 1 to the RFP further explained that the PIC was required to provide some means of protecting UNS-R¹/ communications commensurate with certain national security policy statements, and that "the PIC's proposal for any protection equipment and/or techniques to provide for protected service" must be approved by the National Security Agency (NSA), Common Carrier Protection Division, prior to use. Offerors were advised that protection equipment could be that which had been endorsed by NSA or by application of other acceptable protection techniques or approaches which were provided by NSA in a non-exhaustive list.

The RFP was issued on July 28, 1988, and called for the submission of proposals by September 27. On at least two occasions, ATC telephoned the contract specialist who was designated as the point of contact for the solicitation. By the time she finished speaking with the protester the first time, the specialist stated that she assumed (incorrectly) that NSA certification was required to be submitted with a proposal. However, after reviewing the RFP and consulting, among others, with the staff charged with evaluating proposals, she informed ATC that a firm did not require pre-proposal certification in order to submit a proposal and that technical proposals would be evaluated for compliance with the security requirement on a case-by-case basis. She also advised that the closing date for receipt of proposals would not be extended. When ATC several times expressed concern that it did not want to expend time and money on a proposal without more specific guidelines on NSA compliance requirements, the specialist explained that the government could not guarantee that ATC's proposal would be technically acceptable.

On August 16, ATC wrote to NSA requesting the "specific requirements" and the time required to obtain NSA certification. ATC also wrote the contract specialist on the same date, enclosing a copy of its NSA letter, and requesting advice on what consideration would be given to allowing time for completion of the certification process. In particular, ATC asked if its proposal would "still be

¹/ UNS-R information was defined in the RFP as "any unclassified information related to the national defense or foreign relations of the United States."

considered even though the certification is pending?" and whether a change would be made in the closing date for receipt of offers.

On August 26, 1988, the contracting officer wrote to ATC and advised:

"NSA certification is a requirement of paragraph C.1.2 in the Statement of Work.^{2/} If your proposal does not meet this, or any other provision of the solicitation, it will be determined to be unacceptable. The specified closing date of September 27, 1988, in the referenced solicitation is not extended. Perhaps NSA certification can be obtained in the next four weeks."

In early September, ATC several times telephoned the contracting officer expressing concern that there was insufficient time to obtain NSA certification before the closing date and questioning whether it should expend the time and money to submit a proposal under the circumstances. The contracting officer replied that ATC should submit a proposal and make certain it met all the prerequisites of the RFP. She refused to grant any extension. In telephone calls to NSA, ATC was advised that the certification process ordinarily followed submission of proposals. No other offerors requested clarification of this RFP provision.

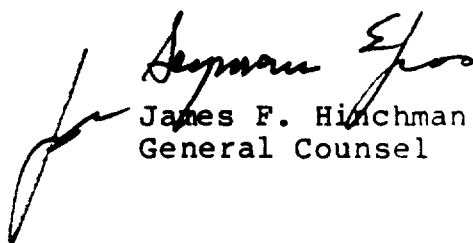
ATC did not submit a proposal, but on September 21, 1988, protested "the undefined and confusing responses to a critical requirement contained in" the RFP. The Army opened the proposals from other offerors on September 27 and on October 3, 1988, replied to ATC's protest. In the course of its reply, the Army explained that "[t]here is no requirement that an offeror . . . , its equipment, or its specific engineering solution, be NSA certified in order to submit a proposal." After stating that ATC had been advised of this fact telephonically by NSA and the contracting officer, the Army advised that the contracting officer was being requested to make the point "even more clearly" in future solicitations. On October 4, ATC received a September 26 letter from NSA which listed acceptable security techniques and companies whose protective services had been approved by NSA. ATC then filed its protest with our Office.

^{2/} This paragraph referred offerors to attachment 1 of the RFP for the "requirement for provision of protection equipment."

ATC essentially protests that the Army misled it by providing conflicting written and oral advice regarding when a proposed security system had to be NSA certified. The Army replies that the RFP was clear and that it advised ATC of the proper interpretation prior to the closing date. While we find that the Army's advice to ATC might have been confusing, we believe that the provision in question is reasonably clear. By its terms, the provision requires offerors to submit the NSA "approval form/certification" and the "back-up material required to obtain said approval" (emphasis added); it does not require approval prior to submission of proposals. We note that no other offeror had trouble interpreting the provision. When read in context, the August 26 written advice to meet the provisions of the RFP and the oral advice that pre-proposal certification was not required only confirmed the intended meaning of the RFP. As such, ATC should have known that NSA certification was not a prerequisite to submitting a proposal. ATC's telephone calls after this advice appear oriented to its reluctance to submit a proposal without more detailed information on NSA's requirements rather than any reasonable misunderstanding of the timing of certification.

The protester also complains that there was insufficient information in the solicitation and from NSA for it to determine whether it could meet the certification requirement. We have reviewed the information furnished with the solicitation and from NSA and find that it is sufficient to apprise offerors of NSA's security requirements. In any event, to the extent the information could be considered lacking, obtaining certification or approval by NSA, which is the cognizant agency for determining whether equipment should be certified as meeting security requirements, is a matter between offerors and NSA and thus not for review by our Office under our bid protest function. See Impact Instrumentation, Inc., B-217291, Feb. 2, 1985, 85-1 CPD ¶ 240.

The protest is denied.



James F. Hinchman
General Counsel